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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/661,873

09/12/2003

Edgar Voelkl

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BAKER BOTTS L.L.P.

PATENT DEPARTMENT

98 SAN JACINTO BLVD., SUITE 1500

AUSTIN, TX 78701-4039

EXAMINER

PATEL, JAYESH A

ART UNIT

PAPER NUMBER

2624

MAIL DATE

DELIVERY MODE

05/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/661,873	Applicant(s) VOELKL, EDGAR	
	Examiner JAYESH A. PATEL	Art Unit 2624	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/YOSEF KASSA/
Primary Examiner, Art Unit 2624

Continuation of 11. does NOT place the application in condition for allowance because: The arguments are not persuasive. See the comments below for the explanation.

In response to applicant's arguments on page 10 of the remarks that Zach fails to teach, either expressly or inherently, all of the elements of the claimed embodiment of the invention. Specifically, Zach fails to teach at least "comparing the modified complex image with the second complex image," as recited in Claim 18, the Examiner disagrees. Zach discloses in fig 2 the modified complex images as being over-focused image and under-focused images (first complex images) of the focused image (second complex image). The images are than Fourier transformed and than inverse transformed to determine the differences. This is clearly a comparing step performed by Zach as claimed in Claim 18. This is explained in (Col 5 Lines 50-61). Zach also discloses in the abstract and at (Col 2 Lines 33) determining the differences in the profiles(intensities) which clearly shows the comparison between the complex images. Zach further discloses "comparing the modified complex image with the second complex image as recited in claim 30 at," at (Fig 2 and Col 5 Lines 50-61) where the differences are obtained showing the comparison. In the comparison the over-focused and the under-focused images are the modified complex images (First complex images within the aberration range) being compared with the focused image (second complex image) in blocks 8,8a and the images are inverse transformed to convert it into the intensities to detrmine the differences. Zach further discloses in the abstract that the differences are obtained. Applicant further argues that Zach fails to suggest a method for detecting differences between complex images comprising "comparing high frequency components of the transformed complex image with high frequency components of the second complex image," as recited by Claim 26,the examiner disagrees. Zach discloses in abstract that the "brightness profiles" are determined which shows that the high frequency components are present in the images and they are compared with each other in the inverse or reverse transformed images to obtain the differences. Zach further discloses the spectrum components at (Col 4 Lines 26) which show that the spectrum means groups of frequencies including the high frequency components. All the Images made of Low and High frequencies and the fourier transforming the frequencies yields the intensity profiles. This is in support with applicants disclosure at Page 3 Lines 28-32 (which says complex images like real images include high and low frequency components). Applicant further argues that Zach also fails to disclose "a system for detecting differences between complex images, comprising processing resources operable to "compare the modified complex image with the second complex image," as recited by Claim 30, the examiner disagrees. Zach in Fig 1 discloses a scanning electron microscope (See Fig 1 and Col 5 Lines 30-31) which is a system to process images using fourier transforms. Zach further discloses that the "Fourier and necessary mathematical transforms are performed" which requires a processor and it is well known to one of ordinary skill in the art as disclosed at (Col 3 Lines 30-34). Applicant further argues that Zach fails to teach or suggest a method for detecting differences between complex images comprising "correcting the aberration value difference by... comparing the modified first complex image with the second complex image in a high frequency range," as recited by Claim 38, the examiner disagrees. Zach discloses in abstract a method of determining geometrical-optical aberrations-- and the image aberration being determined from the differences shows "correcting the aberration value difference by... comparing the modified first complex image with the second complex image in a high frequency range,". Zach further disclose at (Col 2 Lines 33-35) where the differences of the profiles of the probes are used to determine the image aberrations shows "correcting the aberration value difference by... comparing the modified first complex image with the second complex image in a high frequency range," as recited in Claim 38. Applicant further argues on page 11 Line 15 that Zach fails to teach comparison of the modified first image to a second image, the examiner disagrees. Zach in Fig 2 and at Col 5 Lines 50-61 clearly teaches this concept. In the comparison the over-focused and the under-focused images are the modified complex images (First complex images with in the aberration range) being compared with the focused image (second complex image) in blocks 8,8a and the images are inverse transformed to convert it into the intensities to detrmine the differences. The applicant is advised to follow the arrowed outline of comparison in order to follow Zach's teachings directed to the claimed invention of Claims 18,26,30 and 38.